

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: 12-00075-01-CR-W-DGK
	)	
MARCUS D. GAMMAGE,	)	
	)	
Defendant.	)	

**MEMORANDUM OF MATTERS DISCUSSED AND  
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on November 20, 2013. Defendant Gammage appeared in person and with appointed attorneys James Brown and Jane Francis. The United States of America appeared by Assistant United States Attorney Bruce Clark.

***I. BACKGROUND***

On March 13, 2012, an indictment was returned charging Defendant with one count of being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

The following matters were discussed and action taken during the pretrial conference:

***II. TRIAL COUNSEL***

Mr. Clark announced that he will be the trial counsel for the government. The case agent to be seated at counsel table is Detective Keith Rosewarren, Independence, Missouri, Police Department, and Giovani Aloisio, paralegal.

Mr. Brown announced that he will be the trial counsel for Defendant Gammage; Ms. Francis will assist.

### ***III. OUTSTANDING MOTIONS***

The following motions are currently pending:

- United States' SEALED Motion in Limine to Exclude Specific Incidents in Personnel File of Witness (Doc. No. 44), *filed 08/02/13*; and
- Defendant's Motion in Limine to Exclude Evidence of Criminal Convictions of U.S. Witnesses for Impeachment Purposes (Doc. No. 55), *filed 11/19/13*.

### ***IV. TRIAL WITNESSES***

Mr. Clark announced that the government intends to call 8-9 witnesses without stipulations or 6 witnesses with stipulations during the trial.

Mr. Brown announced that Defendant Gammage intends to call 8 witnesses during the trial. Defendant may testify.

### ***V. TRIAL EXHIBITS***

Mr. Clark announced that the government will offer approximately 25 exhibits in evidence during the trial.

Mr. Brown announced that Defendant Gammage will offer approximately 15-20 exhibits in evidence during the trial.

### ***VI. DEFENSES***

Mr. Brown announced that Defendant Gammage will rely on the defense of general denial.

### ***VII. POSSIBLE DISPOSITION***

Mr. Brown stated this case is definitely for trial.

### ***VIII. STIPULATIONS***

Stipulations are likely as to Defendant's prior felony conviction, the interstate nexus of the firearm, and that the firearm tested and operated as designed.

***IX. TRIAL TIME***

Counsel were in agreement that this case will take 2 days to try.

***X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS***

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed May 29, 2012, counsel for each party file and serve a list of exhibits he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by November 20, 2013;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, November 27, 2013;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions<sup>1</sup> by or before noon, November 27, 2013. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

***XI. UNUSUAL QUESTIONS OF LAW***

Defendant plans to file a motion in limine to exclude DNA evidence.

There are two unusual questions of law. First, the parties disagree about transcripts and tapes dealing with prior inconsistent statements; Defendant would like to use the statements in their entirety, whereas the government does not. Second, there is an issue concerning the government enhancing dash cam videos for trial. The government plans to seek admission of the statements captured thereon as excited utterances. I encouraged the parties to file briefing on these issues before trial.

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<sup>1</sup>Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn\_shawver@mow.uscourts.gov and rhonda\_enss@mow.uscourts.gov by November 29, 2013. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. The instructions shall be listed in the order they are to be given.

***XII. TRIAL SETTING***

All counsel and Defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on December 2, 2013.

/s/ Robert E. Larsen  
ROBERT E. LARSEN  
United States Magistrate Judge

Kansas City, Missouri  
November 20, 2013

cc: Mr. Kevin Lyon